IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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I.T.A. No.108 of 2007
Date of Decision:09.07.2007

Subhash Chand Verma

.....Appellant

Vs.

The Commissioner of Income Tax, Chandigarh and another

.....Respondents

CORAM:- HON'BLE MR. JUSTICE M.M.KUMAR
HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present:- Ms. Radhika Suri, Advocate for the appellant.

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M.M.Kumar, J.

This is assessee's appeal filed under Section 260-A of the Income Tax Act, 1961 (for brevity, `the Act') challenging order dated 25.7.2006 (Annexure A.5) passed by the Income Tax Appellate Tribunal, Chandigarh Bench `A', Chandigarh (for brevity, `the Tribunal') in I.T.A. No.884/Chandi/2001 in respect of assessment year 1997-1998 upholding the addition of Rs.4 lacs on account of NRI gift given to the assessee.

At the hearing, it is claimed that the following two substantive question of law would arise for determination of this Court:-

"(i) Whether in the facts and circumstances of the case, the Hon'ble Income Tax Appellate Tribunal was correct in law in confirming the addition of Rs.4 lac received by the assessee/appellant as a bogus gift even though the same had been received through banking channels and it had been proved that the parties were known to each other?

(iii) Whether in the facts and circumstances of the case after having proved the credibility and capacity of the donor, it was further necessary for the donee to prove the "occasion" for making the gift even though as per the definition of "gift", a gift is deemed to be transaction

without consideration?"

During the course of assessment proceedings for the assessment year 1997-1998, the Assessing Officer included a sum of Rs.4 lacs for the purposes of assessment which was introduced by the assessee in his capital account claiming a sum to be a gift received from Shri Arun Wangoo, an NRI from United Kingdom. Before making addition, assessee was granted opportunity to discharge the burden of proving the gift of sum of Rs.4 lacs. The Assessing Officer refused to accept the gift as genuine by recording the following reasons:-

"a) There was no occasion on this particular date when the gift has been received.

b) The credential and the status of the donor remain unproved in the absence of his examination.

c) There exists no relationship between the donor and donee, in other words, and they are stranger to each other.

d) There is no permission of RBI for making this gift.

e) Person from whom the assessee has received gift of Rs.4,00,000/- does not fall in the definition of relative as defined in Section 5(ii)(e) of the Gift-tax Act."

On appeal to the Commissioner of Income Tax (Appeals), (for brevity, `the CIT(A)'), the additions so made by the Assessing Officer were deleted by holding that the assessee was aware of the names of the wife and children of the donor, his relative and friends in Chandigarh. It was further held that the Assessing Officer did not bring on record any material to prove that the gift was not genuine and that the assessee had received the gift from a close friend on account of assessee's ill health. The CIT(A) also recorded his finding that the donor had the capacity to make the gift and, therefore, the genuineness of the gift could not be doubted. The CIT(A) placed reliance on the judgment of the Tribunal in the case of **R.K.Sayal v. ACIT** in I.T.A. No.1165/Chandi/1966, 66 Tax Tribunal Journal (Chd.) 656 to support the conclusion that once the affidavit of the donor affirming the gift has been filed then the initial bonus of the assessee to prove the gift stood discharged.

However, on further appeal to the Tribunal, the view taken by

the CIT(A) was reversed holding that the burden of proof to establish the identity of the creditor, his credit-worthiness and genuineness of the credit is upon the assessee. In that regard, reliance was placed on two judgments of Delhi High Court in the cases of **CIT v. Sunita Vacahni,** 184 ITR 121 (Delhi) and **Sajan Dass and Sons v. CIT,** 264 ITR 435 and also judgment of this Court in the case of **Lall Chand Kalra v. CIT**, (1981) 22 CTR (Punjab and Haryana) 135. The Tribunal further held that the occasion for making the gift could not be established nor any document was proved on record showing that the gift was made for the treatment of the assessee on account of his ill health. The detailed reasons given by the Tribunal are discernible from paras 13 and 14 of the order which reads as under:-

> "13. The assessee has produced confirmation by the donor by means of e-mail claimed to have been received from the donor. The statement of the assessee has also been recorded. The AO has not doubted the identity of the donor. So, however, the financial capacity of the donor to make the gift and genuineness of the gift has been doubted by the AO. Though it appears from the statement of the assessee that donor may not be a stranger yet the occasion for making the gift has not been established. The assessee claims that the amount of Rs.4 lakhs was donated by Shri Arun Wangoo for the treatment of the assessee due to his ill health. So, however, even before us, in response to a query from the Bench, the ld. Counsel for the assessee fairly conceded that there is no evidence to establish that assessee was suffering from any serious ailment which required financial assistance. Moreover, the assessee has also failed to establish the financial capacity of the donor to make the gift. The bank account filed at this stage does not establish the financial credentials of the donor. The bank statement placed on record reveals that the said account was opened on 10-.7.95 with the deposit of Rs.1,00,300. A sum of Rs.8,42,250 has been deposited on 9.11.96 by draft. Two cheques of Rs.2 lakhs each

have been issued on 13.12.96. The said bank a/c does not establish the financial status of the alleged donor. Since the assessee had failed to discharge the onus in regard to the financial capacity and status of the donor as also the occasion for making the gift to establish the genuineness of the gift, the CIT(A) was wrong in deleting the addition. The decisions of the Tribunal, referred to by the CIT(A), are on their own facts. The principles of law in regard to cash credits and gifts are well-established and the appellate authority is bound to apply the principle of law to the peculiar facts of each case. Moreover, in the event of any principle of law laid down by the tribunal being in conflict with the decision of the jurisdictional High Court, we hardly need to mention that the decision of the Hon'ble High Court shall prevail.

14. Taking the totality of facts and circumstances of this case into consideration, we are of the considered view that the decision of the CIT(A) in deleting the addition of Rs.4 lakhs is not in accordance with law. The order of the CIT (A) is accordingly set aside and the addition restored."

Ms. Radhika Suri, learned counsel for the assessee has tried to persuade us to accept the submission that once the identity of the donor is established then a gift cannot be rejected merely on the ground that there was no occasion to make the gift. She has further submitted that there is evidence on record to prove beyond doubt the financial capacity of the donor. In that regard she has drawn our attention to the affidavit filed by the assessee to which reference has been made in the assessment order.

After hearing the learned counsel and perusing the paper book, we are unable to accept the contention raised by the learned counsel for the appellant- assessee. In paras 13 and 14 of the order passed by the Tribunal, categorical findings of facts have been recorded that there was no occasion for the donor to make the gift and the plea of gift for the treatment of the assessee on account of his ill health has remained unsubstantiated. It was conceded by the counsel for the assessee that there was no evidence to

establish that the assessee was suffering from any serious ailment warranting any financial assistance from his NRI friend. The Tribunal has further concluded that the assessee has failed to establish the financial capacity of the donor to make the gift after analysing the bank statement placed on record. Even otherwise it is well settled that mere identification of donor or receipt of amount through Banking Channel is not sufficient to satisfy the requirement of a genuine gift. In that regard, we may place reliance on a Division Bench judgment of this Court in the case of **Jaspal Singh v. CIT,** (1997) 290 ITR 306.

We are further of the view that the questions of law sought to be raised would not arise as those questions are based on presumptions which are contrary to the findings recorded by the Tribunal. The first question would not arise in the teeth of the finding that the assessee was not able to prove the capacity of the donor to make the gift, even though the amount of gift had been received through banking channel and it was proved that the parties were known to each other. Likewise, the second question of law sought to be raised would also not arise because it proceeds on the assumption that the donor has the capacity and credibility to make the gift which is contrary to the findings recorded by the Tribunal. Therefore, the appeal does not warrant admission and the same is dismissed.

(M.M.KUMAR)
JUDGE

July 09, 2007 **(AJAY KUMAR MITTAL)**
renu **JUDGE**